TRUST FUNDS

INTRODUCTION

Montana has a number of constitutional and statutory trusts that provide interest income (over $76 million per year) to fund state government operations. While previous legislatures eliminated the principal of the education trust, stopped the flow of revenue into the permanent coal tax trust, slowed deposits to the parks acquisition trust and the common school trust, and capped the growth of the resource indemnity tax trust, substantial balances remain, totaling over $1.4 billion at the end of FY 2008. This chapter provides a summary of legislative action regarding trust funds in the last several biennia, and a summary of each trust fund in the categories of constitutional and statutory trusts.

BACKGROUND – RECENT LEGISLATIVE ACTION

1999 LEGISLATURE

The Fifty-sixth Legislature in the 1999 session reduced the rate of growth in many of the trusts by passing legislation that redirected incoming revenues. The Fifty-sixth Legislature passed legislation that reduced the FY 2001 ending fund balance for all trusts combined by an estimated $26 million when compared with pre-session estimates. The reduction in revenue growth was the greatest for the Permanent Coal Tax Trust, the Treasure State Endowment, and the Common School Fund. The legislature substantially enhanced the revenue growth into the noxious weed trust and marginally increased revenue into the Resource Indemnity Trust.

2001 LEGISLATURE

The Fifty-seventh Legislature in the 2001 session enacted several measures impacting state trust funds.

- o HB 444 appropriated $990,000 to the Department of Justice for the 2003 biennium as a loan from the coal severance permanent fund. The purpose of the appropriation was to conduct the natural resource damage assessment and litigation, and to pursue Montana's remaining natural resource damage claims, including any appeals, against the Atlantic Richfield Company. This results in a loss of trust interest earning transfers to the general fund.
- o HB 610, beginning FY 2004, reduces the amount of total coal severance tax collections deposited in the treasure state endowment fund from 37.5 percent to percent 25.0 percent and increases the amount deposited to the permanent fund from 0 percent to 12.5 percent.
- o The passage of SB 495 resulted in the sale of the common school trust's mineral production rights and the diversion of future royalties that would have been deposited in the trust. As a result of the sale, the balance of the common school trust increased by $46.4 million, but the trade-off was a substantial reduction in future growth in the trust balance of at least $92.5 million. For further information and analysis of SB 495, contact the Legislative Fiscal Division for a copy of the two-part report: "SB 495 – Implementation, Impacts and Implications".

- o Because the resource indemnity trust reached the constitutionally protected cap of $100 million in FY 2002, any amount in excess of $100 million becomes available for the legislature to appropriate. In HB 2, the legislature appropriated all of the estimated $1.1 million excess in FY 2003, thus reducing the trust balance.

2003 LEGISLATURE

The Fifty-eighth Legislature in the 2003 session enacted one measure impacting state trust funds. HB 160 appropriated $650,000 to the Department of Justice for the 2005 biennium as a loan from the coal severance permanent fund. The purpose of the appropriation was to conduct the natural resource damage assessment and litigation, and to pursue Montana's remaining natural resource damage claims, including any appeals, against the Atlantic Richfield Company. The resulting loss in transfer of trust interest earnings to the general fund was projected at $21,807 in FY 2004 and $44,135 in FY 2005.

2005 LEGISLATURE

The Fifty-ninth Legislature in the 2005 session enacted several measures that affected state trust funds:

1. HB 9 – This transferred $3,912,500 from the general fund to the cultural protection trust fund at the beginning of FY 2006, resulting in a larger balance that generates additional earnings of $200,280 in FY 2006 and $211,097 in FY 2007.
2. HB 201 - The Department of Justice has been appropriated the unexpended amount from the $650,000 of loan proceeds appropriated by the 2003 legislature for the 2005 biennium from the coal severance tax permanent fund. The unexpended amount is estimated to be $440,000. The purpose of the loan and appropriation is to conduct the natural resource damage assessment and litigation, and to pursue Montana's remaining natural resource damage claims and any appeals against the Atlantic Richfield Company. Because the removal of the money from the trust results in a smaller invested balance, the resulting loss in transfers of trust interest earnings to the general fund is expected to be $13,706 in FY 2006 and $27,324 in FY 2007.
3. House Bill 249 – Beginning FY 2006, the 25 percent of remaining coal severance tax revenue (after deposits, if any, in the coal tax bond fund and the school bond contingency loan fund) that previously had been deposited in the coal severance tax permanent fund (12.5% of total revenue), is now deposited in the new Big Sky Economic Development fund within the coal trust. On July 1, 2005, $20.0 million of fund balance in the permanent trust fund was transferred to the Big Sky Economic Development fund. Interest earnings from this new fund are statutorily appropriated to the Department of Commerce for grants and loans to local governments for economic development projects and to certified regional development corporations. Money not spent for administration must be allocated: 1) 75 percent to local governments for job creation efforts; and 2) 25 percent to certified regional development corporations and economic development organizations. The elimination of all deposits to the permanent fund and the one-time $20.0 million reduction in fund balance result in a loss in transfers of trust interest earnings to the general fund of $1,338,000 in FY 2006 and $1,581,000 in FY 2007. State special revenue increases by the same amounts.

2007 LEGISLATURE

The Sixtieth Legislature in the 2007 session enacted five measures that affected state trust funds:

1. HB 9 – The legislation transfers $1.5 million from the general fund to the cultural protection trust fund at the beginning of FY 2008, resulting in a larger balance that generates additional earnings of $83,129 in FY 2008 and $83,282 in FY 2009.

2. HB 298 – For the 2009 biennium, the Department of Justice is appropriated the unexpended amount from the $650,000 of loan proceeds appropriated by the 2003 legislature from the coal severance tax permanent fund. The unexpended amount is estimated to be $400,000. The purpose of the loan and appropriation is to conduct the natural resource damage assessment and litigation, and to pursue Montana's remaining natural resource damage claims and any appeals against the Atlantic Richfield Company. Because the removal of the money from the trust results in a smaller invested balance, the resulting loss in transfers of trust interest earnings to the general fund is expected to be $11,320 in FY 2008 and $22,640 in FY 2009.
3. HB 269 – The legislation transfers $5.0 million from the general fund to the noxious weed management trust fund at the beginning of FY 2008.
4. HB 160 – Unauthorized diversions for Department of Natural Resources and Conservation administrative costs are reimbursed to the common school trust fund through transfers from the general fund to the trust. These transfers result in a total deposit of $14,847 in FY 2008.
5. HB 37 - The Department of Natural Resources and Conservation is allowed to control noxious weeds on state land and to bill the lessee, permittee or licensee for the cost. A penalty of 50 percent of the total cost is to be assessed. Revenue from the penalty is deposited in the applicable land trust. An estimated $125 each year will be deposited to the common school trust fund.

MAJOR TRUST FUNDS

OVERVIEW

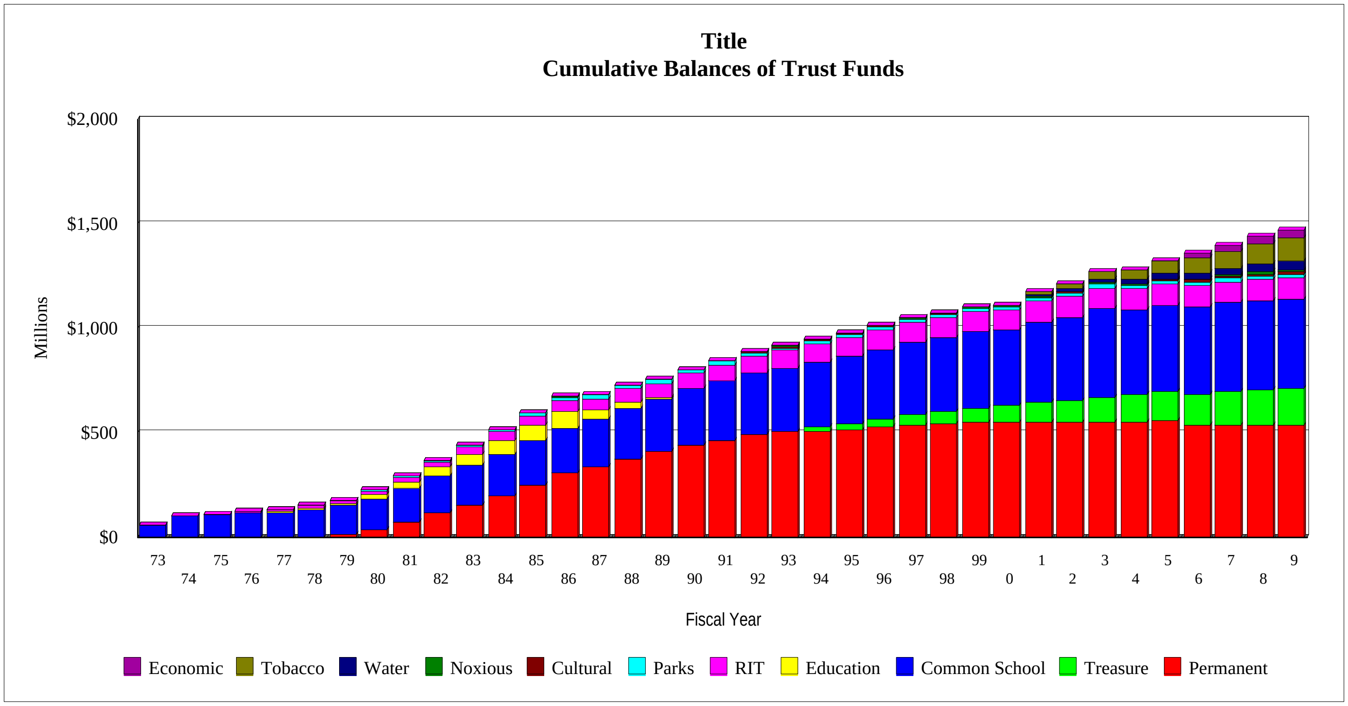
Figures 1 and 2 show the history of the 11 major trusts since FY 1973. Forecast amounts are shown for FY 2009, 2010 and 2011, and are based on assumptions contained in the revenue estimating resolution (HJ 2) and on enacted revenue legislation. Following is a description of each trust and the income it generates. Also shown are expected interest earnings from each trust in FY 2009, 2010, and 2011.

Figure 1

Selected Trust Fund Balances
Including Projected Investment Earnings

	Fiscal Year	Permanent Coal Tax Trust Fund	Treasure St Endowment Trust Fund	Common School Trust Fund	Education Trust Fund	Resource Indemnity Trust Fund	Parks Acquisition Trust Fund	Cultural Protection Trust Fund	Noxious Weed Trust Fund	Regional Water Trust Fund	Tobacco Trust Fund	Economic Development Trust Fund	Total Trust Funds
A	73	0	0	$64,223,773	0	0	0	0	0	0	0	0	$64,223,773
A	74	0	0	108,998,870	0	$1,141,385	0	0	0	0	0	0	110,140,255
A	75	0	0	113,064,188	0	3,287,456	0	0	0	0	0	0	116,351,644
A	76	0	0	117,849,628	$2,227,793	5,552,291	$278,725	0	0	0	0	0	125,908,437
A	77	0	0	123,281,528	6,039,530	8,232,247	758,308	0	0	0	0	0	138,311,613
A	78	$6,268,262	0	129,949,247	8,983,763	10,646,851	1,174,356	0	0	0	0	0	157,022,479
A	79	16,940,538	0	137,716,735	12,339,549	12,574,209	1,475,732	0	0	0	0	0	181,046,763
A	80	39,964,765	0	147,527,943	23,905,146	16,204,531	3,565,371	0	0	0	0	0	231,167,756
A	81	75,187,459	0	163,163,556	33,624,170	21,165,464	5,325,746	0	0	0	0	0	298,466,395
A	82	118,336,314	0	176,467,865	44,338,477	28,328,946	7,480,418	0	0	0	0	0	374,952,020
A	83	158,358,806	0	189,390,417	52,665,410	36,181,889	9,481,542	0	0	0	0	0	446,078,064
A	84	202,936,358	0	201,319,109	60,925,268	42,986,128	11,565,460	0	0	0	0	0	519,732,323
A	85	252,420,524	0	214,764,544	70,500,922	47,396,179	13,859,181	0	0	0	0	0	598,941,350
A	86	309,384,250	0	217,677,906	79,761,708	53,039,675	16,222,131	0	$443,184	0	0	0	676,528,854
A	87	339,883,180	0	227,687,073	44,091,429	56,861,627	16,613,608	0	824,550	0	0	0	685,961,467
A	88	381,180,287	0	239,553,633	33,671,110	61,750,961	16,581,042	0	1,070,972	0	0	0	733,808,005
A	89	411,838,993	0	254,128,428	8,651,477	66,665,000	16,608,706	0	1,320,720	0	0	0	759,213,324
A	90	446,511,416	0	268,496,362	0	72,811,618	17,936,701	0	1,688,370	0	0	0	807,444,467
A	91	470,322,655	0	280,326,496	0	77,324,921	18,882,548	0	2,121,973	0	0	0	848,978,593
A	92	496,465,569	0	291,753,603	0	82,489,898	12,588,366	$7,051,506	2,584,254	0	0	0	892,933,196
A	93	511,474,640	0	300,782,863	0	86,890,369	12,538,119	6,863,579	2,534,844	0	0	0	921,084,414
A	94	511,754,471	$20,520,830	310,735,129	0	89,316,268	12,538,119	7,025,290	2,518,875	0	0	0	954,408,982
A	95	515,470,287	31,793,125	321,265,835	0	91,614,674	12,538,119	7,296,373	2,544,390	0	0	0	982,522,803
A	96	530,144,251	42,262,548	331,630,225	0	93,152,864	12,998,633	7,518,157	2,502,197	0	0	0	1,020,208,875
A	97	538,223,210	52,210,048	347,298,490	0	94,584,643	13,483,000	3,846,000	2,527,953	0	0	0	1,052,173,344
A	98	545,789,038	61,800,580	355,329,490	0	95,582,249	14,005,728	3,852,201	2,537,621	0	0	0	1,078,896,907
A	99	555,204,609	68,334,808	365,188,709	0	94,991,658	14,399,076	3,852,202	2,471,388	0	0	0	1,104,442,450
A	00	553,031,020	81,347,120	359,661,156	0	96,404,163	14,834,592	4,050,384	3,635,000	$3,441,977	0	0	1,116,405,412
A	01	557,477,352	92,182,012	384,741,584	0	100,373,547	15,376,300	4,257,671	4,760,000	7,389,930	$10,819,202	0	1,177,377,598
A	02	555,718,038	105,383,384	394,132,998	0	102,065,653	15,777,802	4,454,360	4,760,000	11,914,241	23,203,088	0	1,217,409,564
A	03	553,406,844	120,337,392	424,415,537	0	100,000,965	15,777,996	4,454,456	5,073,619	16,902,479	35,830,328	0	1,276,199,616
A	04	557,754,322	128,083,371	405,618,690	0	100,002,390	16,289,556	4,653,188	4,864,635	21,078,919	46,788,330	0	1,285,133,401
A	05	562,811,974	138,169,251	414,319,566	0	100,254,844	16,907,531	4,907,330	4,791,222	25,052,688	57,936,845	0	1,325,151,251
A	06	542,783,877	148,003,701	418,539,230	0	100,023,109	17,442,140	8,533,199	4,735,721	30,736,730	68,216,010	24,799,123	1,363,812,840
A	07	541,309,616	162,199,736	406,475,116	0	100,023,109	18,046,122	8,787,534	4,891,074	36,689,464	79,041,441	29,122,282	1,386,585,494
A	08	541,211,992	173,150,257	406,475,116	0	100,023,109	18,709,996	10,569,527	4,891,075	44,022,812	93,341,717	37,864,228	1,430,259,829
Fund Balance Forecast													
F	09	541,212,000	183,815,000	409,577,000	0	100,023,000	19,272,000	10,849,000	9,891,075	49,355,000	108,264,000	43,196,000	1,475,454,075
F	10	541,212,000	195,297,000	410,988,000	0	100,023,000	19,857,000	11,139,000	9,891,075	55,096,000	123,453,000	48,937,000	1,515,893,075
F	11	541,212,000	207,226,000	414,539,000	0	100,023,000	20,470,000	11,443,000	9,891,075	61,060,000	138,960,000	54,901,000	1,559,725,075
Investment Earnings Actual & Forecast													
A	05	36,751,940	8,481,564	24,991,000	0	6,247,097	1,100,104	318,333	224,599	1,396,302	3,202,336	0	82,713,275
A	06	31,106,170	8,038,515	21,896,000	0	5,915,563	971,827	447,040	214,111	1,527,443	3,387,527	1,193,690	74,697,886
A	07	32,334,879	9,224,883	23,314,000	0	6,220,240	1,055,431	515,699	239,071	1,978,817	4,208,268	1,559,210	80,650,498
A	08	28,854,611	9,194,019	22,256,000	0	5,800,854	1,024,699	584,045	239,071	2,174,930	4,545,661	1,801,342	76,475,232
F	09	29,355,000	9,296,000	21,601,000	0	5,581,000	1,052,000	633,000	483,000	2,351,000	5,292,000	2,104,000	77,748,000
F	10	28,747,000	9,929,000	21,719,000	0	5,582,000	1,083,000	649,000	483,000	2,663,000	6,087,000	2,410,000	79,352,000
F	11	28,606,000	10,914,000	22,380,000	0	5,593,000	1,120,000	670,000	483,000	3,124,000	6,948,000	2,818,000	82,656,000

Figure 2



Various restrictions, either constitutional or statutory, prohibit or restrict the expenditure of all or a portion of trust fund balances. For example, the Montana Constitution prohibits expenditure of money in the resource indemnity tax trust until the balance reaches $100 million. Since the balance of this trust is at this limit, any additional trust balance can be spent. Figure 3 shows 10 active trust funds, their fiscal 2008 balances, and the restrictions for spending the balances.

Figure 3

Selected Trust Funds
Balances and Restrictions

Type of Restriction/Trust Fund	Fiscal 2008 Balance	Restrictions
Statutory		
Parks Acquisition Trust	$18,408,171	None
Cultural Trust	10,410,747	None
Subtotal	$28,818,918	
Constitutional		
Permanent Coal Severance Tax Trust	$531,720,629	Inviolate, except by 3/4 vote of each house
Common School Trust	411,603,300	Inviolate, guaranteed by state against loss or diversion
Treasure State Endowment Trust	158,795,858	Inviolate except by 3/4 vote of each house
Resource Indemnity Tax Trust	100,023,109	Inviolate, $100 million guaranteed by state against loss or diversion
Tobacco Settlement Trust	93,341,717	Inviolate, except by 2/3 vote of each house
TSE Regional Water System Trust	38,246,879	Inviolate, except by 3/4 vote of each house
Economic Development Trust	34,773,763	Inviolate, except by 3/4 vote of each house
Noxious Weed Management	9,970,644	$10 million inviolate, except by 3/4 vote of each house
Subtotal	$1,378,475,899	
Total	$1,407,294,817	

CONSTITUTIONAL TRUSTS

Permanent Coal Tax Trust

Article IX, Section 5 of the Montana Constitution requires that at least 50 percent of all coal severance tax revenue be deposited in a permanent coal tax trust fund, and that the principal of the trust "shall forever remain inviolate unless appropriated by a vote of three-fourths of the members of each house of the legislature." By statute, interest earned on this trust that is not earmarked for other programs is distributed 100 percent to the general fund. As described below, some of the interest earned on the trust is earmarked for other programs.

The interest earned on the permanent coal tax trust fund is an important general fund revenue source. During the period of FY 1981 through FY 2004, $821.9 million in interest from this trust was deposited in the combined general fund/school equalization account (SEA). In FY 2008, permanent coal tax trust fund interest provided 1.5 percent of total revenue to the general fund.

Initiative 95, approved by voters in 1982, required that 25 percent of the revenue deposited in the permanent coal tax trust after June 30, 1983, be placed in the in-state investment trust fund for investment in the Montana economy "with special emphasis on investments in new or expanding locally owned enterprises." The 1991 legislature: 1) eliminated separate accounting for the in-state investment trust; and 2) instructed the Board of Investments to "endeavor to invest up to 25 percent of the permanent coal tax trust fund" in the Montana economy.

The 1989 and 1991 Legislatures gave authority to the Montana Science and Technology Alliance (MSTA) for the use of $12.5 million from the in-state investment fund for investment in new and expanding technology-based Montana businesses and for research and development project loans. The 1993 Legislature authorized MSTA to invest an additional $11.0 million from the in-state investment program.

The payback of principal from MSTA loans returns to the trust. Before July 1, 1993, the interest from MSTA loans was distributed in the same manner as other interest earned on the permanent coal tax trust fund. HB 394, enacted by the 1993 Legislature, created a special revenue account into which all interest earned from MSTA loans is deposited and from which MSTA expenses will be paid, with the balance returning to the trust.

The 1991 Legislature also appropriated $3.3 million from the permanent coal tax trust fund for the Microbusiness Development Act. These funds provided capital to microbusiness development corporations that provide loans and technical assistance to qualified small businesses. Interest earnings and loan repayments were retained by the program to finance administrative costs and future loans.

During the January 1992 Special Session, the legislature authorized the creation of a school bond contingency loan fund within the permanent coal tax trust fund. The contingency fund provided up to $25.0 million in loan guarantees for school district bonds certified by the Department of Administration as meeting certification standards, but for which subsequent litigation prevents collection of property taxes levied for debt service. School districts are required to repay any guarantee funds used. Interest on the contingency fund is distributed in the same manner as all other interest earned on the permanent coal tax trust fund. The provisions of this legislation expired on January 1, 1993. HB 667, passed during the 1993 Legislative Session, provides Guaranteed Tax Base (GTB) aid to certain schools with bonds outstanding or bond issues contemplated. The source of funding for GTB aid was the school equalization account (SEA). The contingency fund will continue to exist until calendar 2012 when the bonds will be retired. At the end of FY 2003, all school districts with loans backed by the state had refinanced their debt and the state no longer secures the bonds issued by the Department of Administration. In FY 2003, all reserves in the contingency fund were distributed to the treasure state endowment fund and the treasure state endowment regional water fund.

In the June 1992 election, voters approved a referendum to create the treasure state endowment fund (TSEF) within the permanent coal tax trust fund. The fund received a $10.0 million grant from the trust principal in FY 1994 and will receive half the funds deposited in the trust during FY 1995 through FY 2013. Interest earned on the TSEF is used to finance local infrastructure projects, as prioritized by the Departments of Commerce and Natural Resources and Conservation, and authorized by the legislature.

During the November 1993 Special Session, the legislature authorized SB 4 that required the cash balance in the coal tax bond fund as of July 1, 1993 be deposited in the permanent coal tax trust fund. The total amount transferred was $31.1 million. SB 4 also changed the distribution mechanism by requiring the 50 percent coal severance tax revenue allocation be deposited in the TSEF and the permanent coal tax trust fund on an equal basis. Prior to SB 4, coal severance tax revenue earned on production taking place beginning July 1, 1993, was to have been deposited in TSEF. In the following fiscal year, one-half of the previous year's inflow was to have been deposited in the permanent coal tax trust fund, and the TSEF was to retain the rest. Without SB 4, the permanent coal tax trust fund would not have received any coal severance tax revenue during FY 1994.

The 1993 Legislature passed HB 401, which authorized a loan to the Department of Environmental Quality (DEQ) from the permanent coal tax trust fund for technical, litigation, and administrative expenses associated with the natural resource damage litigation suit against the Atlantic Richfield Company in the Clark Fork River Basin. The amount of the loan was $2.6 million for the 1995 biennium and $5.2 million to repay principal and interest to the general fund for litigation costs incurred in the 1993 biennium. As of December 1994, $6.3 million had been withdrawn from the permanent coal tax trust to pay for litigation expenses. Since then, the case has been settled and money returned to the permanent trust (see the write-up of HB 110 enacted by the 1997 Legislature).

1995 Legislative Action

HB 305 authorized a loan to the Department of Justice from the permanent coal tax trust for the purpose of conducting the litigation and natural resource claims against the Atlantic Richfield Company in the Clark Fork River Basin. The amount of the loan was $2.4 million for the 1997 biennium. The bill also extended loans made for the same purpose during the 1995 biennium.

HB 354 expanded appropriations for the Microbusiness Financing Act, which provides loans to businesses employing less than ten employees and generating less than $500,000 in gross revenue annually. The expansion of this program doubled the previous appropriation to $3.25 million of investable coal tax trust funds made available to the Microbusiness Finance Program in the Department of Commerce. Beginning July 1, 1995, HB 354 also increased maximum loan amounts per individual loan from $20,000 to $35,000. The program provides financing for working capital assets and fixed asset acquisition, with more flexible repayment terms than those offered by commercial institutions.

Payback of interest and principal of the loan amounts are used for administrative purposes and for financing new microbusiness loans.

SB 38 authorized the Job Investment Act under which the Department of Commerce may loan a portion of the permanent coal tax trust to businesses to create and retain jobs in Montana. A loan to a qualified business may not exceed $500,000, and the department is to report annually to the Revenue and Taxation Committee. The legislation also reduced the amount of permanent coal tax trust funds that the Board of Investments allows the Montana Board of Science and Technology Development to invest in seed capital loans and mezzanine loans from $15.5 million to $12.5 million. The bill also increased the amount of permanent coal tax trust funds available for research and development projects from $8.1 million to $11.1 million. In the past, these funds were used primarily as loans to the University System. Under SB 38, these funds were granted to the University System for research and development projects.

SB 83 abolished the distribution of coal trust interest to the SEA. Under previous law, 15 percent of coal trust interest earnings were deposited in the SEA and 85 percent in the general fund. As a result of SB 83, 100 percent of coal trust interest earnings are deposited in the general fund in FY 1996 and beyond.

1997 Legislative Action

HB 110 appropriated $2.5 million to the Department of Justice in state special revenue to be used for continuing litigation expenses associated with the Atlantic Richfield case. The appropriation was for expenses incurred during the 1999 biennium, and, upon settlement of the case, the amount used plus interest was to be returned to the general fund. The case was settled in June of 1998 for $215 million. On June 24, 1998, $15 million was deposited into Short-Term Investment Pool (STIP) for payment to the permanent trust and the general fund. In the middle of October 1998, $12.2 million was transferred to the permanent trust, including $9.8 million in principal and $2.4 million in interest. In the middle of November 1998, $1.9 million was transferred to the general fund. This transfer consisted of principal ($1.4 million) and interest ($0.5 million), and constituted repayment of general fund loans going back to FY 1983 when the case began.

The legislature amended the allocation of coal severance taxes under 15-35-108, MCA. In HB 14, the 1997 Legislature authorized the issuance of general obligation bonds to fund the purchase of Virginia City and Nevada City properties. In HB 5, the legislature allocated 1.3 percent of coal severance tax revenue to pay the debt service on the bonds, which have a term of ten years. Coal tax revenue will be distributed to the Long-Range Building Program (LRBP) debt service account for FY 1998 through 2007. This allocation diverts coal severance tax revenue that would otherwise be deposited in the general fund. Based on revenue estimates in HJR 2, this change in allocation resulted in a loss to the general fund of $0.5 million in FY 1998 and 1999. Once the ten-year period has expired, the 1.3 percent allocation will revert to the general fund.

HB 5 also eliminated the 0.63 percent distribution of coal severance tax to the cultural and aesthetic (C&A) trust during the 1999 biennium only. The legislature appropriated $3.9 million from the cultural trust for the immediate purchase of Virginia City and Nevada City. This appropriation resulted in a loss of trust interest revenue that otherwise would have been used to fund C&A projects during the 1999 biennium. In order to compensate for the lost interest, the legislature allocated 0.87 percent of coal severance tax revenue to the C&A projects account and eliminated the 0.63 percent of coal severance tax revenue that had been deposited in the cultural trust. The remaining 0.24 percent of coal taxes allocated to the C&A project account was previously part of the flow into the general fund. Based on revenue estimates in HJR 2, this part of HB 5 resulted in a loss to the general fund of $91,736 and $93,195 for FY 1998 and 1999, respectively. After the 1999 biennium, similar amounts of coal severance tax revenue were diverted from the C&A projects account and again flowed to the general fund.

HB 578 abolished the Montana Board of Science and Technology beginning July 1, 1999. The amount of money committed for research and development ($11.1 million) and for seed capital loans ($12.5 million) was disbursed until July 1, 1999. Any money under these caps that had not been committed, except for $915,000, was returned to the coal tax trust. The board continued to provide seed capital loans of up to $700,000 to existing seed capital companies until July 1, 1999 or until an amount of $915,000 was reached. However, up to $75,000 could have been used for administrative expenses. Beginning April 1, 1997, the proceeds from seed capital loans must be deposited in the coal tax trust. However, during FY 1998, $250,000 of seed capital income, as well as $150,000 of job investment loan income, was used to fund the judges' retirement system. Also beginning April 1, 1997, and ending July 1, 1999, up to $2.0 million in income and interest from research and development loans at Montana public universities was authorized to be granted to research and development (R&D) projects at the universities. After July 1, 1999, all repayment proceeds from both seed capital loans and R&D loans in excess of $4.4 million must be deposited in the coal severance tax permanent fund.

1999 Legislative Action

Beginning July 1, 1999, HB 260 imposed a new coal license tax on the contract sales price of coal and reduced the coal severance tax liability for coal producers by allowing a credit against the coal severance tax in the amount of 101.5 percent of the coal license tax liability. Thus, coal producers would realize a reduction of 1.5 percent in the tax liability on coal production. The total reduction in coal severance tax collections was estimated at $20.7 million in FY 2000 and $19.6 million in FY 2001. The new coal license tax was estimated to generate $20.4 million in FY 2000 and $19.3 million in FY 2001. The legislation, in combination with HB 69 and SB 220, provided a new distribution of coal severance taxes and specified a distribution for the new coal license tax. Under the new distribution, none of the coal severance revenue would have been distributed to the permanent trust. Instead, 37.5 percent of the reduced coal severance tax revenue stream would have been deposited in the treasure state endowment trust fund, and 12.5 percent would have been deposited in a new TSEF regional water system account (SB220). The remaining distribution of the coal severance tax would be deposited as under previous law, except that the amount (1.3 percent) to long range building program debt service would have been directly deposited in the general fund as per HB 69. Coal severance tax revenue deposited in the permanent fund would be reduced by $8.3 million in FY 2000 and by $7.9 million in FY 2001. None of the new coal license tax would have been allocated to the permanent fund. Coal severance tax revenue deposited in the TSEF would have been reduced by $3.6 million in FY 2000 and $3.4 million in FY 2001. The revenue diversions in each trust, as well as some of the revenue from the new coal license tax, would have been deposited into spendable accounts used for ongoing projects and payments associated with infrastructure loans and grants, agricultural seed capital, and research and commercialization loans and grants.

However, on January 20, 2000, the Montana Supreme Court found that HB 260 violated Article IX, Section 5, of the Montana Constitution and enjoined enforcement of the new coal producer's license tax. This rendered most of the legislation and appropriations meaningless. The decision did not affect the establishment of the research and commercialization expendable trust. Coordination with SB 220 also was not affected, allowing the establishment of the treasure state endowment regional water system trust and the distribution of coal severance tax to the trust, and the TSEF remain intact.

HB 69 eliminated the distribution of coal severance tax revenue to the long range building debt service account that was used to pay bonds issued for the purchase of Virginia City and Nevada City properties. Beginning July 1, 1999, the revenue is deposited in the general fund and the bond service payments are made by the general fund.

Beginning July 1, 1999, SB 220 created a new treasure state endowment regional water system fund into which is deposited 25 percent of one-half of all coal severance receipts. The other 75 percent of one-half of coal severance receipts flows into TSEF.

2001 Legislative Action

The Fifty-seventh Legislature in the 2001 session enacted HB 444 that appropriated $990,000 for the 2003 biennium to the Department of Justice as a loan from the coal severance permanent fund. The purpose of the appropriation is to conduct the natural resource damage assessment and litigation, and to pursue Montana's remaining natural resource damage claims, and any appeals against the Atlantic Richfield Company. The resulting loss in transfers of trust interest earnings to the general fund was an estimated $17,573 in FY 2002 and $52,718 in FY 2003. Any reimbursements received had to be deposited in the coal severance tax permanent fund. The legislation required a three-quarters vote of each house of the legislature.

Beginning FY 2004, HB 610 reduced the amount of total coal severance tax collections deposited in the treasure state endowment fund from 37.5 percent to percent 25.0 percent, and increased the amount of total collections deposited to the permanent fund from 0 percent to 12.5 percent. These changes resulted in greater interest earnings for the general fund and lower interest earnings for Treasure State Endowment Program beginning FY 2004.

In conjunction with HB 41, SB 495 changes the portion of school funding provided by the common school trust. The main points of the legislation are:

- Interest and income from the common school trust are deposited to a subfund of the general fund called the guarantee account
- The Department of Natural Resources and Conservation was authorized to purchase the mineral production rights from the common school trust
- A loan of up to $75 million from the coal severance trust permanent fund was authorized to purchase the mineral production rights and deposited in the common school trust (the actual transaction was $46.4 million)
- Any mineral royalties from the purchased rights are deposited to the guarantee account
- After principal and interest payments on the loan used to purchase the mineral production rights are paid, the remaining money in the guarantee account is available for distribution to school districts
- Upon electorate approval of a constitutional amendment (contained in SB 493), the public school trust may be invested in private corporate capital stock (the electorate did not approve this measure)

Although it was estimated that the cost of the mineral production rights would be $37.4 million, the actual amount loaned from the coal severance permanent fund was $46.4 million. It is estimated that the loss of interest earnings that would have been deposited to the general fund is $3.2 million in each year of the 2005 biennium. The legislation required a three-quarters vote of each house of the legislature.

Coal tax revenue flowing into the permanent coal tax trust fund is also used to secure state bonds issued to finance water resource development projects and activities.

Coal tax revenue is first deposited into the school bond contingency loan fund within the permanent coal tax trust fund. The contingency fund provides up to $25.0 million in loan guarantees for school district bonds certified by the Department of Administration as meeting certification standards, but for which subsequent litigation prevents collection of property taxes levied for debt service. The contingency fund has provided backing for $24.6 million in school bonds for 16 schools. The average balance in the contingency fund has been slightly more than $2.0 million. At the end of FY 2003, all schools districts with loans backed by the state had refinanced their debt and the state no longer secures the bonds issued by the Department of Administration. In FY 2003, all reserves in the contingency fund were distributed to the treasure state endowment fund and the treasure state endowment regional water fund.

In the August 2002 special legislative session, the legislature passed HB 4 and HB 7. Combined, these bills changed the guarantee account from a subfund in the general fund to a state special revenue fund and statutorily appropriated the money for schools.

2003 Legislative Action

HB 160 appropriated $650,000 to the Department of Justice for the 2005 biennium as a loan from the coal severance permanent fund. The purpose of the appropriation was to conduct the natural resource damage assessment and litigation and to pursue Montana's remaining natural resource damage claims, including any appeals, against the Atlantic Richfield Company. The resulting loss in transfers of trust interest earnings to the general fund was projected at $21,807 in FY 2004 and $44,135 in FY 2005. Any reimbursements received must be deposited in the coal severance tax permanent fund. The legislation required a three-quarters vote of each house of the legislature.

2005 Legislative Action

HB 201 appropriated the unexpended amount of the $650,000 loan proceeds (estimated to be $440,000) from the coal severance tax permanent fund appropriated by the 2003 Legislature to the Department of Justice. The purpose of the loan and appropriation is to conduct the natural resource damage assessment and litigation and to pursue Montana's remaining natural resource damage claims and any appeals against the Atlantic Richfield Company. Because the removal of the money from the trust results in a smaller invested balance, the resulting loss in transfers of trust interest earnings to the general fund was expected to be $13,706 in FY 2006 and $27,324 in FY 2007.

House Bill 249 – Beginning FY 2006, the 25 percent of remaining coal severance tax revenue (after deposits, if any, in the coal tax bond fund and the school bond contingency loan fund) that previously had been deposited in the coal severance tax permanent fund (12.5% of total revenue), is deposited in the new Big Sky Economic Development fund within the coal trust. On July 1, 2005, $20.0 million of fund balance in the permanent trust fund was transferred to the Big Sky Economic Development fund. Interest earnings from this new fund are statutorily appropriated to the Department of Commerce for grants and loans to local governments for economic development projects and to certified regional development corporations. Money not spent for administration must be used: 1) 75 percent to local governments for job creation efforts; and 2) 25 percent to certified regional development corporations and economic development organizations. The elimination of all deposits to the permanent fund and the one-time $20.0 million reduction in fund balance result in an expected loss in transfers of trust interest earnings to the general fund of $1,338,000 in FY 2006 and $1,581,000 in FY 2007. State special revenue increases by the same amounts.

2007 Legislative Action

For the 2009 biennium, HB 298 appropriated to the Department of Justice the unexpended amount from the $650,000 of loan proceeds appropriated by the 2003 legislature from the coal severance tax permanent fund. The unexpended amount is estimated to be $400,000. The purpose of the loan and appropriation is to conduct the natural resource damage assessment and litigation, and to pursue Montana's remaining natural resource damage claims and any appeals against the Atlantic Richfield Company. Because the removal of the money from the trust results in a smaller invested balance, the resulting loss in transfers of trust interest earnings to the general fund is expected to be $11,320 in FY 2008 and $22,640 in FY 2009.

Common School Trust

Article X, Sections 2 and 3 of the Montana Constitution require that all royalties and other proceeds received from school lands granted to the state under the federal enabling act must be deposited in the common school trust fund and "shall forever remain inviolate, guaranteed by the state against loss or diversion." Article X, Section 5 requires that 95 percent of the interest from this trust be used for school equalization, with the remaining 5 percent reinvested in the trust. In addition, 95 percent of all rents, royalties, and other income received from leasing of school lands are to be used for public schools with the remaining 5 percent invested in the trust.

During the January 1992 Special Session, the legislature passed HB 3, which provided that 95 percent of the revenue from state timber sales (approximately $4.9 million) be deposited in the SEA during the 1993 biennium, with the remaining 5 percent deposited in the trust.

The 1993 Legislature passed HB 652, which continued the practice of diverting 95 percent of timber revenue to the SEA during the 1995 biennium. The loss in revenue to the common school trust during the 1995 biennium was approximately $9.1 million. HB 667, also passed during the 1993 Legislative Session, continued this practice indefinitely. The loss of revenue to the common school trust during the 1997 biennium was approximately $9.7 million.

1995 Legislative Action

HB 50 made permanent certain provisions regarding the sale of timber on state lands. HB 50 was expected to result in additional sales of timber during the 1997 biennium. However, additional costs associated with the sale of timber were also expected to be incurred. These costs were deducted from timber sale revenues.

HB 201, passed by the 1995 Legislature, required the state to increase timber sales from state lands consistent with an annual sustainable yield of 45 million board feet to 55 million board feet, contingent on a study to determine the appropriate level of annual sustainable yield. HB 201 capped the amount of timber sale revenue deposited in the general fund (formerly the school equalization account, which was abolished in SB 83) from the common school trust at an average annual sale value of 18 million board feet. Any excess timber sale revenue from the common school trust was to be deposited in the general fund, but "earmarked" for deposit in the school districts' newly established technology acquisition fund, to buy technological equipment and provide technical training for school district personnel.

HB 201 also affected timber sale revenue because it diverted timber sale revenue before it was deposited in the general fund to pay for costs associated with increasing timber sales. The total revenue effect was estimated to be a loss of $1.1 million to the general fund during the 1997 biennium.

HB 274, passed by the 1995 Legislature, granted the Department of State Lands broader discretion to expedite sales of state timber in emergency situations and limited access situations. Effective in FY 1996, as a result of the natural resources reorganization bill (SB 234), the forestry function was transferred from the Department of State Lands to the Department of Natural Resources and Conservation.

SB 83 de-earmarked all interest from the common school trust and income earned on common school lands. Henceforth, these revenues flow into the general fund.

1997 Legislative Action

The 1997 Legislature passed legislation that impacted the flow of timber revenue into the common school trust by appropriating timber revenue for use by the DNRC to enhance timber sales during the 1999 biennium. The amounts appropriated, $1.2 million and $1.3 million in respective years of the biennium, were diverted from the revenue stream before the allocation of 5 percent of revenue to the trust.

HB 2 appropriated anticipated timber sale revenue in excess of that associated with 18 million board feet for deposition in schools' technology acquisition funds. The purpose of the fund is to allow each district to buy technological equipment and provide technical training for school district personnel. The amounts appropriated were $1.5 million in FY 1998 and $2.8 million in FY 1999, or the amount of "excess" revenue in each year, whichever is less.

1999 Legislative Action

SB 48 made significant changes in funding the Trust Land Management Division in the Department of Natural Resources and Conservation. The legislation diverted a portion of the following money (previously deposited into the corpus of the land trust funds) from certain land trusts administered by the department: 1) mineral royalties; 2) the proceeds or income from the sale of easements and timber (except timber from public school lands); and 3) 5 percent of the interest and income previously credited annually to the public school fund. The money was diverted to a state special revenue account to pay costs of administering state trust lands. The legislation provided limitations on the amount of diverted revenue and the amount of the appropriations: 1) the diverted revenue was limited to 1-1/8 percent of the book value balance in each of the nine nonexpendable trust funds on the first day of January preceding the new biennium and 10 percent of the previous fiscal year revenue deposited into the capitol building land grant trust fund; and 2) appropriations of the money were limited to 1-1/8 percent of the book value balance in the nine nonexpendable trust funds on the first day of January preceding the new biennium and 10 percent of the revenue deposited in the capitol building land grant trust fund in the last completed fiscal year prior to the new biennium. In HB 2, the legislature replaced $7.1 million of general fund appropriations with state special revenue provided by this legislation. Therefore, deposits to land trusts (primarily the Common School Trust) were reduced by $7.1 million over the biennium, approximately $3.5 million per year.

2001 Legislative Action

Although SB 495 potentially could have increased the balance of the common school trust by $75 million due to the sale of its mineral production rights, the increase depended on the amount of rights purchased by DNRC and the sale price. The actual purchase price of the mineral production rights was $46.4 million and this amount was deposited to the trust. Since future royalties from any sold mineral production rights are no longer deposited in the common school trust, the future growth of the trust is substantially curtailed by an estimated $95 million over 30 years. For further information and analysis of SB 495, contact the Legislative Fiscal Division for a copy of the two-part report: “SB 495 – Implementation, Impacts and Implications”.

2005 Legislative Action

Under existing law, a portion of income from the sale of common school trust timber is diverted for use by the Department of Natural Resources and Conservation for administrative purposes and a portion is for use by the Office of Public Instruction for school technology. Five percent of the remainder is deposited in the school trust. If the legislature appropriates more of this income for administrative purposes, the amount deposited to the school trust is reduced. HB 447 (the state employee’s pay plan) appropriated money from this source for increases in pay and benefits, thus reducing the amount deposited to the trust by an estimated $2,454 in FY 2006 and $6,424 in FY 2007.

2007 Legislative Action

Under HB 160, unauthorized diversions for Department of Natural Resources and Conservation administrative costs are reimbursed to the common school trust fund through transfers from the general fund to the trust. These transfer result in a total deposit of $14,847 in FY 2008.

HB 37 allows the Department of Natural Resources and Conservation to control noxious weeds on state land and to bill the lessee, permittee or licensee for the cost. A penalty of 50 percent of the total cost is to be assessed. Revenue from the penalty is deposited in the applicable land trust. An estimated $125 each year will be deposited to the common school trust fund.

Although SB 2 in the May 2007 Special Session does not change the amount of revenue deposited to the guarantee account, it does temporarily change the use of the money in the account. Once the loan authorized in SB 495 (see “2001 Legislative Action” above) has been repaid (estimated to be in FY 2008), all net mineral royalties from common school trust lands deposited to the guarantee account are transferred to a school facility improvement state special revenue account. However, once net mineral royalties sold under SB 495 total $138.9 million, the mineral royalties will once again become part of the trust corpus and will no longer be deposited to the guarantee account or transferred to the school facility improvement account. It is anticipated that the $138.9 million amount will be reached in FY 2010. Between FY 2008 and 2010, approximately $52.4 million will be transferred from the guarantee account to the school facility improvement account. Money in the account must be used to implement the recommendations of the school facility condition and needs assessment and energy audit conducted under SB 1 (December 2005 special session) for : 1) major deferred maintenance; 2) improving energy efficiency in school facilities; and 3) critical infrastructure in school districts.

Resource Indemnity Trust

Article IX, Section 2 of the Montana Constitution and Title 35, Chapter 38, MCA, require that certain resource extraction taxes be placed in a trust. The principal of the resource indemnity trust "shall forever remain inviolate in an amount of one hundred million dollars ($100,000,000), guaranteed by the state against loss or diversion." Once the principal of the trust reaches $100 million, any additional tax revenue may be appropriated.

During the July 1992 Special Session, the legislature imposed a one-year surtax on resource indemnity tax liabilities and allocated collections from the surtax to the general fund. During the 1993 legislative session, the legislature passed HB 608 that decreased the amount of resource indemnity and groundwater assessment (RIGWA) tax proceeds deposited in the trust during the 1995 biennium from 85.9 percent per year to 55.9 percent, or approximately $5.0 million. The bill further reduced the amount of RIGWA tax revenue deposited in the trust to 45.9 percent beginning July 1, 1995. During the 1995 session, the legislature replaced a portion of RIGWA tax proceeds with oil and gas tax proceeds due to a bill to simplify oil and gas taxes (SB 412). Also, the legislature diverted for other purposes the metal mines license tax proceeds that previously were deposited to the trust.

1997 Legislative Action

SB 377 reduced the growth rate in the ending fund balance of the RIT trust by diverting $200,000 per year from RIGWA tax inflows and 8.5 percent from metalliferous mines license tax revenue to a newly created orphan share account. The reduction of inflow into the trust in each year of the biennium as a result of these diversions was $674,000 and $743,000. The orphan share account is used to: 1) fund remedial actions on the portion of hazardous waste sites for which there is no responsible party; and 2) pay for DEQ transaction costs associated with defending the orphan share proportions.

1999 Legislative Action

SB 49 and SB 492 increased the allocation of the RIGWA tax and the RIT share of the oil and gas production tax to the RIT. The ending fund balance at the end of the 2001 biennium was estimated to increase by $162,000 as a result of the legislation. The legislation also eliminated the allocation of RIGWA tax revenue to the RIT beginning July 1 of the first year following the date that the governor by executive order certified to the secretary of state that the RIT balance has reached $100 million.

2001 Legislative Action

The RIT balance reached the $100 million amount in FY 2002 and the balance was certified by the governor. Therefore, no additional revenue is deposited in the trust beginning FY 2003. The revenue estimates showed that there would be an estimated $101.1 million in the trust balance by the end of FY 2003. Since any additional tax deposits over the $100 million may be appropriated by the legislature, the 2001 Legislature enacted the following legislation that uses all of the excess revenue: 1) SB 326 authorized the transfer of $500,000 to the noxious weed state special revenue account for distribution to counties (the money is appropriated in HB 2); 2) HB 2 transferred and appropriated $540,000 to purchase securities for water treatment at the former Zortman and Landusky mines; and 3) HB 2 transferred and appropriated $120,000 for the Clark Fork River task force (established in HB 397).

Tobacco Settlement Trust

Montana receives revenue as a settling party to master settlement agreement with four original tobacco companies (subsequently, this became three) and many subsequent companies that ended a four-year legal battle that included 46 states, and six other entities. Montana is eligible for four types of payments: 1) reimbursement for legal costs (received December 1999); 2) five initial payments (two in FY 2000 with an additional one per year in FY 2001, 2002, and 2003); 3) on-going, perpetual annual payments; and 4) strategic contribution payments (from FY 2008 through 2017). The master settlement agreement places no restrictions on how states are to spend the money.

The total amount of tobacco settlement funds available to Montana may be affected by a number of adjustments. The three most important are the adjustments for inflation, volume of cigarettes shipped nationally, and loss of market share for participating manufacturers. The amount of Montana's annual share will increase by a minimum amount of 3 percent or more if inflation is greater than 3 percent. The amount will decrease if the number of cigarettes shipped nationally decreases and will increase if the number increases. If it is verified that participating manufacturers have lost market shares due to disadvantages caused by the settlement and Montana has failed to enforce its "qualifying statutes", distributions will decrease.

2000 Constitutional Amendment

Due to passage of Montana Constitutional Amendment 35 in November 2000, the legislature is required to dedicate not less than 40 percent of the tobacco settlement money to a permanent trust fund. The remainder of the money is deposited into the general fund. Since the legislature did not pass legislation establishing the exact percentage to be deposited to the trust fund, the revenue estimate assumes 40 percent. Interest earnings from the trust fund are to be distributed: 1) 90 percent for appropriation by the legislature for tobacco related disease prevention programs and state programs providing benefits, services, or coverage that are related to the health care needs of the people of Montana; and 2) 10 percent to the trust. Money in the trust fund can be spent if approved by two-thirds of each house of the legislature. Appropriations of principal, income, or interest from the trust fund cannot be used to replace state or federal money used to fund tobacco disease prevention programs that existed on December 31, 1999.

2001 Legislative Action

The 2001 Legislature enacted SB 129 that established a Montana tobacco settlement non-expendable trust fund to implement Article XII, Section 4, of the Montana Constitution. The legislation also provided criteria to govern the purposes for which the interest, income, and principal of the trust may be appropriated. It did not establish a statutory percentage of the tobacco settlement dedicated for deposit in the trust fund.

2002 Initiative

Due to passage of Initiative 146 by the electorate in November 2002, beginning in FY 2004, 32 percent of the total tobacco settlement money funds tobacco prevention programs and 17 percent funds the Children's Health Insurance Program. The remaining 11 percent of the total settlement money is deposited to the general fund.

2003 Legislative Action

The 2003 Legislature enacted SB 485 that changed Initiative 146 by increasing the programs that can be funded by tobacco settlement money, but only through FY 2005. With the changes, the 32 percent allocation can be used for human services programs and the 17 percent allocation can be used to match federal Medicaid money. The legislation also transferred $5,831,360 in FY 2004 and $6,057,600 in FY 2005 from the account receiving the 32 percent allocation to a newly created prevention and stabilization state special revenue account. Money in this account is used by the Department of Public Health and Human Services to finance, administer, and provide health and human services.

Noxious Weed Management Trust

During the period FY 1986 through 1992, at least one-half of the collections from a 1 percent surcharge on the retail sale of herbicides were deposited in the noxious weed management trust fund. The remaining collections were spent for weed control grants. The interest earned on the trust is retained in the trust. After the principal of the trust reached $2.5 million in FY 1992, all herbicide surcharge collections and the interest earned on the trust became available for weed control grants.

1995 Legislative Action

SB 321, passed by the 1995 Legislature, increased the amount of the gasoline tax revenue allocated to the snowmobile account from 23/64 of one percent to 15/28 of one percent. Beginning in FY 1996, one percent of the amount deposited in the snowmobile account is deposited in the Montana noxious weed control trust administered by the Department of Agriculture.

1999 Legislative Action

For the 2001 biennium, SB 164 transferred $1.1 million per year to the noxious weed trust from the highway non-restricted account in 15-70-125, MCA. As a result, the ending fund balance in the trust will almost double by June 30, 2002.

2001 Legislative Action

The August 2002 special legislative session reduced the transfer to the noxious weed state special revenue account for counties to $300,000.

2004 Constitutional Amendment

The electorate in the November 2004 election approved an amendment to the Montana Constitution (C-40) creating a noxious weed management trust fund. Ten million dollars of the principal of the fund is to remain forever inviolate unless appropriated by three-fourths of each house of the legislature. Appropriations of the principal over $10 million and the interest and income can only be used to fund the noxious weed management program, as provided by law.

2005 Legislative Action

The 2005 Legislature enacted HB 266 to codify statutory changes needed to implement the constitutional amendment passed in 2004.

2007 Legislative Action

The 2007 Legislature enacted HB 269 which transfers $5.0 million from the general fund to the noxious weed management trust fund at the beginning of FY 2008.

STATUTORY TRUSTS

Education Trust

From FY 1976 through FY 1986, a portion of the revenue from the coal severance tax was allocated to an education trust for the support of education. The legislature appropriated the corpus of this trust to the school equalization account during the period of FY 1987 through FY 1990. Since FY 1990, the education trust has not received revenue from any source and its balance is zero.

Parks Acquisition Trust/Cultural Protection Trust

During most of the years since 1979, a portion of the coal severance tax has been earmarked for the parks acquisition trust. During the late 1980s, the flow of revenue into this account was diverted to the general fund. However, the principal began to increase again in FY 1990. Prior to FY 1992, two-thirds of the interest from this trust was statutorily allocated for acquisition and operation of state parks, and one-third was allocated for protection of works of art in the state capitol, and other cultural and aesthetics projects.

The 1991 Legislature split the principal of this trust into two separate trusts, a parks acquisition trust and an arts protection trust. During the 1993 biennium, the coal tax revenue that would have flowed into the parks acquisition trust (1.267 percent) was spent for maintenance of parks and historic sites, along with the interest from the trust. HB 687, passed during the 1993 legislative session, continued this practice for the 1995 biennium, allocating $1.6 million from the trust to current operations. In the 1997 biennium, the coal tax revenue allocation was again deposited in the trust. SB 27, passed by the 1995 Legislature, increased the allocation to the parks acquisition trust from 1.267 percent to 1.270 percent.

In FY 1992, 0.633 percent of coal severance tax revenues were deposited in the arts protection trust, with the trust interest continuing to be used for protection of works of art and for cultural and aesthetics projects. During the January 1992 Special Session, the legislature diverted a portion of the revenue that would have flowed into the arts protection trust in FY 1993 to fund the operations of the Montana Arts Council. Beginning in FY 1994, these revenues were again deposited in the trust. SB 27, passed by the 1995 Legislature, decreased the allocation to the arts trust from 0.633 percent to 0.63 percent.

1997 Legislative Action

The 1997 Legislature amended the allocation of coal severance taxes under 15-35-108, MCA. HB 5 eliminated the 0.63 percent distribution of coal severance tax to the cultural and aesthetic trust during the 1999 biennium only. The legislature appropriated $3.9 million from the cultural trust for the immediate purchase of the Virginia City and Nevada City properties. This appropriation resulted in a loss of trust interest revenue that otherwise would be used to fund C&A projects in the state during the 1999 biennium. In order to compensate for the lost interest, the legislature allocated 0.87 percent of coal severance tax revenue to the C&A projects account, and eliminated the 0.63 percent of coal severance tax revenue that had been deposited in the cultural trust. The remaining 0.24 percent of coal taxes allocated to the C&A project account was previously part of the flow into the general fund. After the 1999 biennium, similar amounts of coal severance tax revenue were diverted from the C&A projects account and again flowed to the general fund.

1999 Legislative Action

HB 260, HB 69, and SB 220 reduced coal severance tax revenue and replaced it with coal license tax revenue. The aim of the legislation was to hold the revenue flow into the arts and parks trusts as under current law. However, the arts and parks trusts lost around $25,000 over the biennium.

The January 20, 2000 decision of the Montana Supreme Court that found HB 260 violated Article IX, Section 5, of the Montana Constitution rendered the above changes meaningless.

2001 Legislative Action

In the August 2002 special legislative session, for FY 2003, the legislature temporarily diverted the parks acquisition trust, 1.27 percent allocation and the cultural trust, 0.63 percent allocation to the general fund. Beginning in FY 2004, the allocations resume.

2005 Legislative Action

HB 9 transferred $3,412,500 from the general fund to the cultural trust. The transfer of funds replaced dollars spent from the trust in the 1997 purchase of Virginia and Nevada Cities. The legislation directed that the transfer take place at the beginning of FY 2006 so that new interest would be earned throughout the entire 2007 biennium. Revenues from the cultural trust increase $200,280 in FY 2006 and $211,097 in FY 2007.

2007 Legislative Action

HB 9 transfers $1.5 million from the general fund to the cultural protection trust fund at the beginning of FY 2008, resulting in a larger balance that generates additional earnings of approximately $83,129 in FY 2008 and $83,282 in FY 2009.